

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Boralex Livemore Falls, Inc.)	Docket Nos.	ER01-2569-005
Boralex Stratton Energy LP)		ER98-4652-005
Boralex Ft. Fairfield LP)		ER02-1175-004
Boralex Ashland LP)		ER01-2568-003

**SUPPLEMENTAL COMMENTS OF
THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission (“MPUC”), by and through counsel, Lisa Fink, State of Maine Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018, and Lisa S. Gast, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036, respectfully files these Supplemental Comments on the relevant geographic market for Boralex’s market power analysis in accordance with the September 7, 2007 Notice Granting Request to File Additional Comments.

I. BACKGROUND

On June 29, 2007, Boralex submitted its June 29 Filing in compliance with the triennial rate review requirement imposed by the Commission’s orders in the above-captioned dockets, which granted authorizations to sell power at market-based rates to four Boralex subsidiaries that own interests in biomass-fueled qualifying small power production facilities with generation capacities in excess of 20 MW (the “Boralex Large QFs”).¹ In the June 29 Filing, Boralex asserted that the Maritime Control Area (“MCA”) constitutes the appropriate “control area” for purposes of the Interim Screen Order’s

¹ See June 29 Filing at 1.

application to the Boralex Large QFs located within the Northern Maine Independent System Administrator (“NMISA”).² On July 20, 2007, the MPUC filed comments on the Boralex filing (“July 20 Comments”). One of the points made in the July 20 Comments was that northern Maine, rather than the MCA, was the relevant geographic market for the purpose of the Boralex market power analysis for the Boralex Large QFs located within northern Maine. The MPUC noted in its July 20 Comments that the Interim Screen Order acknowledges that “defining the relevant geographic market on a control area-by-control area basis may not be appropriate in all circumstances . . .” and therefore allows, on a case-by-case basis, applicants and intervenors to present additional information.³ In its July 20 Comments, the MPUC described the unique circumstances of northern Maine:

Northern Maine is small and electrically isolated, suppliers in northern Maine are subject to the market rules and tariffs of NMISA, and there are only “two” players in northern Maine that control essentially all the generation and transmission. Further, because competition has not fully developed in the New Brunswick area, competitive supply out of New Brunswick at this time is not a viable option. Indeed, the dominance of a single supplier in the New Brunswick region poses an additional obstacle to competition in Northern Maine.⁴

On August 29, 2007 the Commission held a Technical Conference in the above-captioned dockets to address several issues, one of which was “(1) what is the relevant geographic market for Boralex’s market power analysis – the Northeast Power

² See *id.* at 5.

³ *Id.*, citing *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018 (2004) (“Interim Screen Order”) at P 75.

⁴ July 20 Comments at 15.

Coordinating Council's Maritimes Control Area ("MCA") or the Northern Maine Independent System Administrator ("NMISA") region;...."⁵

At the conclusion of the Technical Conference, the MPUC suggested that it would be willing to submit additional information relating to the issue of whether northern Maine is the relevant geographic market for Boralex's market power analysis for the Boralex Large QFs within the NMISA. The MPUC submitted a request to do so, which was granted by the Commission on September 7, 2007.

II. SUPPLEMENTAL COMMENTS

Northern Maine is the relevant geographic market for purposes of market power analysis because of the unique circumstances of this area. Although considered part of the MCA by the Northeast Power Coordinating Council ("NPCC") for assessing bulk power system reliability, northern Maine is a stand-alone control area and market (albeit a dysfunctional one) in many important respects. The Transmission and Distribution utility serving northern Maine, Maine Public Service Company, provided a succinct description of these unique circumstances:

Addressing the regulated and unregulated market conditions, i.e. the lack of retail competition and inadequate wholesale competition within northern Maine involves a complex set of problems exacerbated by the small scale of the northern Maine market, its limited availability of "on-system" generation and its transmission interconnections with a sole, foreign, government-owned electric utility. Over the years, the relationships among utilities with the northern Maine and New Brunswick have been exceptional. However, the structural and regulatory changes that have occurred within the electric energy markets with northern Maine and New Brunswick combined with the lack of a liquid wholesale trading

⁵ See Second Notice of Technical Conference, dated August 21, 2007.

market and concentration of generation ownership, present significant market and infrastructure operational issues.⁶

As discussed below, northern Maine should be considered the relevant geographic market because northern Maine has a separate market, with separate market rules and objectives and separate dispatch. In addition, northern Maine, for reasons discussed in detail below, cannot look to New Brunswick generation to compete with the dominant players in northern Maine.

A. NMISA and New Brunswick Control and Operate their Systems Separately and Have Separate Market Rules Based on Different Objectives.

The MCA includes the Canadian provinces of New Brunswick, Nova Scotia and Prince Edward Island, as well as Northern Maine.⁷ However, unlike other control areas with sub-areas, such as ISO-NE, the MCA does not have one market, governed by one set of market rules and common objectives. For example, the New Brunswick and northern Maine markets have separate rules governing balancing energy and the purpose of the rules for each of these two separate markets is to address the needs of load within the

⁶ Comments of Brent M. Boyles, President & CEO of Maine Public Service Company, MPUC Docket No. 2006-513, attached hereto as Attachment A; *see also*, Northern Maine System Administrator, Seven Year Outlook: An Assessment of the Adequacy of Generation and Transmission Facilities of Northern Maine Transmission System, March 30, 2007, at 2 (“The dominant characteristics of the Northern Maine Market are its electrical isolation, large geographic size, small electric demand, and modest population”).

⁷ Northeast Power Coordinating Council, Interregional Long Range Adequacy Review, 2006, at 13, which can be found at the following link: http://www.interiso.com/public/meeting/20070323/20070323_resource_adequacy_overview.pdf. Nova Scotia Power, a subsidiary of EMERA, supplies load in Nova Scotia. Although it is interconnected with New Brunswick, Nova Scotia Power has never submitted a bid to supply northern Maine load. Most of Prince Edward Island’s electric power is imported from Nova Scotia and New Brunswick. *Id.*

respective New Brunswick or northern Maine sub-region.⁸ Thus, the purpose of the New Brunswick market rules is to “promote an economically efficient and reliable supply of electricity *in New Brunswick . . .*”⁹ Similarly, the NMISA is authorized, subject to Board approval, to propose rules that are “necessary and appropriate to the fair, efficient and reasonable operation of the *Northern Maine Market.*”¹⁰

In addition, the NMISA and New Brunswick bulk power systems are separately controlled and dispatched. In northern Maine, scheduling is administered by the NMISA and bulk power system control is handled by the in-region transmission owner. The New Brunswick System Operator (“NBSO”) handles those functions for New Brunswick.

In short, northern Maine’s separate market, separate dispatch, and separate demand and energy forecasts all militate in favor of considering northern Maine, rather than the MCA, the relevant geographic market for purposes of analyzing the potential for market dominance of the Boralex Large QFs in northern Maine.

B. Generation from New Brunswick Power Corporation Is Not a Source of Competition in the Northern Maine Market

Several documents make clear that northern Maine cannot look to New Brunswick for a source of generation to enhance or produce competition in northern Maine. First, NB Power, though restructured, remains a publicly owned “Crown Corporation” which is committed “to provide New Brunswickers with safe, reliable and

⁸ In fact, each of the Maritimes area systems prepares its own demand and energy forecasts, and as NPCC notes, “...there is no regulatory requirement for a single authority to produce a forecast for the whole Maritimes area. *Id.*”

⁹ New Brunswick Electricity Market Rules 1.2.1 (emphasis added).

¹⁰ NMISA Market Rule 4.1 (emphasis added).

reasonably-priced electricity.”¹¹ In fact, NB Power specifically uses its generation first to supply its provincial customers.¹² NB Power also owns NB Power Transmission.¹³ Second, NB Power has made clear that economic generation will not soon be available to be supplied to serve Maine load.¹⁴ In fact, the NBSO’s ten-year outlook shows a deficiency in New Brunswick’s generation supply for New Brunswick load resulting primarily from the planned 18-month refurbishment of the Point Lepreau nuclear power plant due to begin in April 2008.¹⁵

¹¹ NB Power, 2005-2006 Annual Report at 2, which can be found at <http://www.nbpower.com/en/corporate/about/reports/reports.aspx>.

¹² See NB Power website reassuring consumers that NB load will be supplied through long-term contracts with the “Heritage Pool” (which are the existing NB Power generating resources). <http://www.nbpower.com/en/corporate/about/restructure/restructure.aspx#4>. See also “10-Year Outlook: An Assessment of the Adequacy of Generation and Transmission Facilities in New Brunswick 2007-2016” at 13. Additionally, a recent resource adequacy assessment for New Brunswick reports that (“NB Power Distribution and Customer Service (DISCO) currently serves 99.8% all of New Brunswick customer load, except for Perth Andover whose 0.2% of New Brunswick load is served by WPS Energy Services Inc. in Maine.”)

¹³ See <http://transmission.nbpower.com/en/default.aspx>. (“NB Power Transmission owns and operates the transmission system used to carry electricity from generating stations and other supply interfaces over long distances to the consumer distribution network, large industrial customers, and export markets.”)

¹⁴ June 29th Letter from NB Power to Kurt Adams attached hereto as Attachment B. Neither NB Power nor Nova Scotia Power supplied bids in the Northern Maine standard offer Request for Bids. As discussed in the July 20 Comments, the only bidder was Integrys Energy Services, Inc.

¹⁵ New Brunswick System Operator, 10 Year Outlook: An Assessment of the Adequacy of Generation and Transmission Facilities in New Brunswick, 2007-2016 at 42, located at the following link: <http://www.nbso.ca/Public/en/docs-EN/Notices/10-year%20Outlook%202007.pdf>.

III. CONCLUSION

All of the interrelated factors discussed above indicate that the Northern Maine market is, in key respects, a stand-alone system. Therefore, Northern Maine is the relevant geographic market for the purpose of the Boralex market power analysis.

Dated: September 12, 2007

Respectfully submitted,

/s/ Lisa S. Gast

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Counsel for the Maine Public
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ATTACHMENT A

December 8, 2006

Ms. Karen Geraghty
Administrative Director
Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, Maine 04333-0018

Re: MPUC Docket No. 2006-513, Maine Public Utilities Commission Standard Offer Bidding Procedure For Customers of Maine Public Service Company

Dear Ms. Geraghty:

Maine Public Service Company ("MPS," the "Company") supports the Commission's initiative to request input from interested parties regarding possible approaches to addressing the lack of competition in the northern Maine power market. The alternatives identified thus far by the Commission include: utility ownership of generation assets, the cost-based regulation of generation facilities, the viability of a direct transmission connection to other control areas, and the creation of a regulated entity to manage electricity supply. Notice of Meeting, November 21, 2006, at 1.

Maine Public Service Company has been an active participant in Commission proceedings exploring the problems confronting the northern Maine market since deregulation began on March 1, 2000. Since that time there have been several inquiries into the various aspects of the market. These inquiries include: MPUC Docket No. 2003-82, *Inquiry into the Status of the Competitive Market in Northern Maine*; MPUC Docket No. 2003-423, *Inquiry into Incentives to Promote Energy Efficiency and Security of the Electric Grid*; MPUC Docket No. 2003-456, *Barriers to Electricity Flows Between Maine and Atlantic Canada*; and MPUC Docket No. 2004-248, *Inquiry into the Status of the Reliability and Security of the Electric Grid*.

In addition, two years ago MPS proposed the construction of a new 138 kV transmission line to New Brunswick, paired with an undertaking to participate in backstopping New Brunswick Power's construction of the International Power Line, for the purpose of boosting system reliability and stimulating wholesale competition in northern Maine. MPUC Docket No. 2004-538, *Maine Public Service Company Request to Construct Transmission Line of 100 KiloVolts or More from Limestone, Maine to Canadian Border near Hamlin, Maine* (Phases I and II). This case, and the various "Inquiry Dockets," generated no end of discussion regarding these issues. Unfortunately, however, and despite the good faith efforts of the many parties

interested in the unique issues presented by the northern Maine power market, achieving a consensus among the northern Maine's stakeholders has proven to be elusive. Consequently, the Company remains concerned the northern Maine grid may be vulnerable to failure under peak load conditions should the generation assumed to be available by the Commission in its Phase I Order in Docket 2004-538 become unavailable for any reason. MPS remains committed to working with the Commission and the northern Maine stakeholders to find a long-term solution to this problem.¹

Addressing the regulated and unregulated market conditions, i.e., the lack of retail competition and inadequate wholesale competition within northern Maine involves a complex set of problems exacerbated by the small scale of the northern Maine market, its limited availability of "on-system" generation and its transmission interconnections with a sole, foreign, government-owned electric utility. Over the years, the relationships among utilities within the northern Maine and New Brunswick regions have been exceptional. However, the structural and regulatory changes that have occurred within the electric energy markets within northern Maine and New Brunswick combined with the lack of a liquid wholesale trading market and concentration of generation ownership, present significant market and infrastructure operational issues.

The Company will actively participate in next week's three-day meeting, and commends the Commission's willingness to take the initiative in seeking to find a solution to the lack of competition in northern Maine. In that spirit, the Company offers the following comments in regards to the alternatives outlined in the Commission's November 21st Notice of Meeting:

1. *Transmission Solutions.* The Company agrees with the Commission that the possibility of adding a direct transmission connection to other control areas deserves serious attention. For example, adding a new transmission line running from Houlton south and interconnecting with the Maine Electric Power Company 345 kV line by means of the "Bridal Path" right-of-way controlled by MPS has the potential to improve reliability, enhance the liquidity of the northern Maine market, and facilitate new generation in northern Maine by allowing generators to reach the rest of New England. The Company believes that short of a direct link to the NE market, retail competition is highly unlikely to ever develop in northern Maine, as evidenced by the last seven years. MPS strongly encourages the Commission to adopt this link as a central part of any solution. To this end, MPS will ask the Commission to endorse an approach whereby MPS will spend the coming months developing a financially and technically feasible proposal linking northern Maine to the New England market. MPS will be prepared to review this option with the Commission and the stakeholders during next week's meeting.

¹ In light of the Commission's decision in Docket 2004-538 to rely on the biomass plants, in lieu of additional transmission, to ensure the stability and reliability of the grid, and for other obvious reasons, the Commission must exercise care as this Docket unfolds to assure the owners of these plants that revisions to the current market will not undercut their investments.

2. *Utility Ownership of Generation Assets (Including Output)*. The Company is open to exploring ways in which this option may be accomplished, and believes that legislation resulting from this NOI should allow for the possibility.

Given the failure of a retail market to take traction in northern Maine, reintegrating the power supply function into the T&D utility has to be given serious consideration. Considering the unique characteristics and very small size of this market, a fully regulated approach may provide the greatest level of protection to consumers. MPS recognizes the complexities associated with this option, and will not lightly propose this without considerable further internal review and assessment. MPS remains committed to finding a solution that is in the best interest of northern Maine electric customers. MPS therefore requests, in this process, that the door be left open for further consideration, and possible re-entry of MPS into generation ownership at some level. In this regard, some of the benefits derived from this model could include:

- a. Retail competition although desirable would be replaced with a fully regulated structure limiting the allowed return on those generation assets eventually owned by the utility.
- b. Improving reliability through long-term capacity planning.
- c. Administrative synergies as a result of maintaining all power supply planning, procurement and administration functions within a single organization.

One party in these proceedings has suggested that MPS might purchase generation output under a long-term contract in order to stimulate new in-region generation. MPS remains somewhat skeptical given its experience with the Wheelabrator Agreement. Nevertheless, the Company believes this approach could work if care is taken to protect MPS and its ratepayers. Therefore, the Company is prepared to discuss this idea, subject to a number of conditions:

- a. MPS will continue to oppose any initiative that carries with it the potential for creating new stranded costs, will insist that it be fully compensated for any costs it incurs as a result of any such action, and believes that its shareholders should be compensated for making the Company's credit available to sponsors of generating facilities.
- b. Utility purchases of generation output should be determined as a result of an RFP process.
- c. If the purpose of a generation purchase is to enhance competition (and/or reliability) for the *entire* NMISA area, then all transmission and distribution utilities whose customers are to benefit from the purchase must participate in the purchase on a pro rata basis.

3. *Cost-Based Regulation of Generation Facilities or Creating a Regulated Entity to Manage Supply*. The Company assumes that the State of Maine would abandon the generation market approach in favor of one of these models only if it were determined

that nothing feasible could be done to stimulate a competitive market in northern Maine. At this time, the Company believes that other approaches to stimulating competition warrant consideration before these models are given serious attention.²

MPS looks forward to discussing these and other issues confronting the northern Maine grid with the Commission and the other stakeholders at next week's sessions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent M. Boyles". The signature is fluid and cursive, with the first name "Brent" being more prominent.

Brent M. Boyles
President & CEO

cc: Service List

² The northern Maine market, likely one of the smallest in the Country, is far too small to support multiple layers of independent administration, as would result if a separate load manager function were established. Creating such an entity would result in employees located at three different locations: MPS, NMISA, and the newly created load manager all performing functions requiring to a certain extent similar skill sets. These employees would be working with three separate sets of infrastructure and requiring three separate sets of management and regulatory oversight.

ATTACHMENT B



Énergie NB Power

Production Generation

29 June 2007

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 State Street, State House Station 18
Augusta, ME 04333

Att: Mr. Kurt Adams

***Re: Request for Comment –
Standard Offer Bidding Procedure and
Inquiry into Northern Maine Markets***

Dear Mr. Adams:

The present letter is New Brunswick Power Generation Corporation's (NB Power) submission to the Maine PUC's Request for Comments concerning the lack of competition in the Northern Maine electricity market.

NB Power and Northern Maine have a long history of energy trading dating back to NB Power's first ever international transmission line construction in 1957. Over the years, considerable cooperative effort has translated into long standing commercial activity between NB Power and Maine utilities. In the past decade, following the restructuring of the Maine electricity market, NB Power agreed to provide certain electrical products and services to Northern Maine utilities to resolve any market power issues and support a competitive market in the region.

In October 2004, the New Brunswick System Operator (NBSO) was established to support the development of a wholesale market in New Brunswick. Many of the Ancillary Services which the NBSO offers replace products and services previously provided by NB Power to Northern Maine utilities. During this period, NB Power continued to be a significant supplier of capacity and energy into the Northern Maine region, with transfers from NB to Northern Maine often approaching 100 MW's per hour. In part due to the agreements structured between NB Power and utilities in Northern Maine, the Northern Maine region has generally been afforded lower cost energy prices than that available in southern regions of Maine and other New England jurisdictions.

Since 2006, the operational and economic climate within NB Power has not produced longer term capacity and energy agreements with utilities in Northern Maine. Although constant discussion does occur between the utilities, significant maintenance on larger, lower cost NB Power generators combined with non-economic NB Power generation has precluded longer term contracts. As a result, NB Power has not been able to offer contract pricing which would keep prices in Northern Maine on par or below those available in other regions of the State.

The present dilemma which faces the Maine PUC and NB Power is whether these conditions are temporary in nature or a sign of how the electricity and fuel markets will be positioned in the long-term. Should the economics of electricity trading return to "normal" or traditional patterns, the construction of a new transmission line to connect Northern Maine directly to the New England grid may be viewed as unnecessary. NB Power is forecasting surplus capacity for the next decade and beyond. Provided maintenance programs are successful and NB Power's generation portfolio is economic in the eastern North America marketplace, considerable exports will continue to be supplied by NB Power.

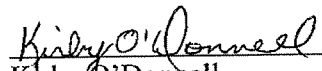
Should the longer term situation be such that NB Power generation is not economic in the Northern Maine marketplace, there are no barriers (especially given the pending completion of the 2nd 345kV transmission line) to New England sourced capacity and energy for delivery to Northern Maine. Today, New Brunswick-Northern Maine interfaces are unconstrained and capable of delivering a majority of the regions energy requirements. NB Power is able to negotiate with utilities in Northern Maine to provide energy management services to the region or conversely reservations for firm service are available on the NBSO's OASIS site. Undeniably the net present value of either of these solutions places considerably less cost burden on the ratepayers of Maine than the other alternatives under consideration. Additionally, the PUC may desire to negotiate with ISO-New England to lower out service fees in lieu of additional cost burdens associated with a new transmission line into the Northern Maine region.

Regardless of the perceived competitiveness of the Northern Maine market, NB Power shall continue to explore opportunities for selling competitively priced capacity and energy into the region. It is NB Power's belief that the historic bond between our utilities will remain in tact despite the lower volumes witnessed in the past year.

NB Power values its unique relationship with Northern Maine and looks forward to future arrangements.

Sincerely,

NB POWER GENERATION CORPORATION


Kirby O'Donnell
Director of Marketing

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 12th day of September, 2007.

/s/ Harry A. Dupre
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